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State v. Lara Appellant's Brief Dckt. 44802

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44802
Plaintiff-Respondent,)	
)	CASSIA COUNTY NO. CR 2012-164
v.)	
)	
JOSE ANTONIO LARA,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Jose Antonio Lara appeals from his judgment of conviction for second degree murder. Mr. Lara pleaded guilty and the district court imposed a unified sentence of life, with eighteen years fixed. Mr. Lara now appeals, and he asserts that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

On July 9, 2011, deputies from the Cassia County Sheriff's Department were dispatched to a residence in Burley with regard to a suspicious death. (Presentence Investigation Report

(*hereinafter*, PSI), p.3.) Joann Lara, who was 25 years old, was found dead inside the bedroom. (PSI, p.3.) Ms. Lara had a thin cord, similar that used by an MP3 player earpiece, wrapped around her neck. (PSI, p.3.) There were ligature marks around her neck indicating a sign of strangulation. (PSI, p.3.)

Mr. Lara, the husband of Ms. Lara, was found outside of the residence. (PSI, p.3.) He informed the deputies that he had spent the night at his mother's residence and came home to find his wife deceased. (PSI, p.3.) An officer spoke to Mr. Lara's mother, who stated that she heard that Ms. Lara was having an affair, and she said that she had called the police earlier because Mr. Lara had stated that he wanted to die. (PSI, p.3.)

Mr. Lara was charged by Information with first degree murder. (R., p.223.) He eventually pleaded guilty to second degree murder. (R., p.514.) The district court imposed a unified sentence of life, with eighteen years fixed. (R., p.567.) Mr. Lara appealed. (R., p.590.) He asserts that the district court abused its discretion by imposing an excessive sentence.

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of life, with eighteen years fixed, upon Mr. Lara following his conviction plea of guilty to second degree murder?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Life, with Eighteen Years Fixed, Upon Mr. Lara Following His Conviction Plea Of Guilty To Second Degree Murder

Mr. Lara asserts that, given any view of the facts, his unified sentence of life, with eighteen years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review

of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Lara does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Lara must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

At the sentencing hearing, counsel described his first meetings with Mr. Lara, and indicated that “it’s kind of hard to reconcile what he did with the person that I meet with who’s kind and polite, respectful.” (Sent. Tr., p.12, Ls.11-19.) “I know my first meeting was awkward because I never had a client hug me and tell me, ‘thank you for coming to see me,’ and that happened every time I’d go see him. He’d give me a hug and [say], ‘Thank you for coming to see me.’” (Sent. Tr., p.12, Ls.11-19.)

Counsel noted that the biggest issues in this case were Mr. Lara’s cognitive disabilities. (Sent. Tr., p.12, Ls.20-25.) Mr. Lara had previously been found to be incompetent in this case, but it was determined about two or three years before the entry of the plea that Mr. Lara was

competent to stand trial. (Sent. Tr., p.6, Ls.1-4.) Counsel for Mr. Lara noted that he had been tested for his IQ, which was measured at 65 or 66. (Sent. Tr., p.13, Ls.16-24.) Mr. Lara suffered from depression and has a mental and learning disability. (PSI, p.11.) The Idaho Standard Mental Health Assessment indicated that Mr. Lara was intellectually disabled, was in special education throughout school, and had received disability monies from a young age. (Idaho Standard Mental Health Assessment, p.5.)

Counsel noted that in this case, Mr. Lara “killed probably his best friend, you know, and I was struck when I met him. He’d like to forget what he did, because he killed his best friend. And I thought what worse punishment you can do than when you wake up every day and you see you’re in a jail cell and know you why you did it, and that would be hard.” (Sent. Tr., p.15, Ls.9-19.) Counsel also expressed concern that, due to Mr. Lara’s intellectual disability, he had been teased and bullied in the past and was concerned about how he would fare in prison. (Sent. Tr., p.16, Ls.1-11.) When asked if he wanted to make a statement, Mr. Lara stated, “Yes. I miss my wife and my kids, and I just want to go home. That’s about it.” (Sent. Tr., p.19, Ls.9-10.)

Counsel requested that the court impose a “15-year minimum” sentence to give the “Department of Correction a little more leeway in what they do with him. And hopefully Jose can gain a better understanding of what he’s done, and make sure those things don’t happen in the future.” (Sent. Tr., p.17, L.23 – p.18, L.3.)

Considering his cognitive disabilities, remorse, and his character as described by trial counsel, Mr. Lara respectfully submits that the district court abused its discretion by imposing a sentence of life, with eighteen years fixed.

CONCLUSION

Mr. Lara respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 18th day of September, 2017.

_____/s/_____
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of September, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

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JUSTICE CENTER
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DISTRICT COURT JUDGE
E-MAILED BRIEF

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

JMC/eas